UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PDL BioPharma, Inc., Plaintiff, v. Eli Lilly and Company, Defendant.	Civil Action No.1:23-cv-02289-RLY-MKK

PDL BIOPHARMA, INC.'S SUPPLEMENTAL NOTICE REGARDING ELI LILLY AND COMPANY'S MOTION TO DISMISS UNDER RULES 12(b)(1) AND 12(b)(6)

Plaintiff PDL BioPharma, Inc. respectfully submits this Supplemental Notice regarding Defendant Eli Lilly & Company's Motion to Dismiss Under Rules 12(b)(1) and 12(b)(6), filed March 5, 2024. ECF No. 35.

In its Motion to Dismiss, Lilly argued (among other things) that "PDL has no Article III standing because it has not suffered any injury, given it seeks royalties on a product that is not generating sales on which royalties would apply." ECF No. 36 at 12-13. Lilly further explained, however, "[i]t is possible that donanemab receives FDA approval and Lilly begins selling donanemab before the Court resolves this motion ***in which case this argument will be mooted***," but "Lilly nevertheless had to file the motion before the parties had certainty about whether donanemab would receive approval." *Id.* at 13 n.2 (emphasis added).

Donanemab received FDA approval on July 2, 2024. ECF No. 58. In the Revised Case Management Plan, Lilly confirmed that it "withdraws [its Article III standing] challenge to the Court's subject matter jurisdiction" in light of the FDA's approval of donanemab. ECF No. 60 at 3. Accordingly, Lilly's standing challenge is now moot. With the lifting of the stay in this matter (ECF No. 59), the other arguments in Lilly's Motion to Dismiss are now ripe for resolution.

Dated: July 18, 2024

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